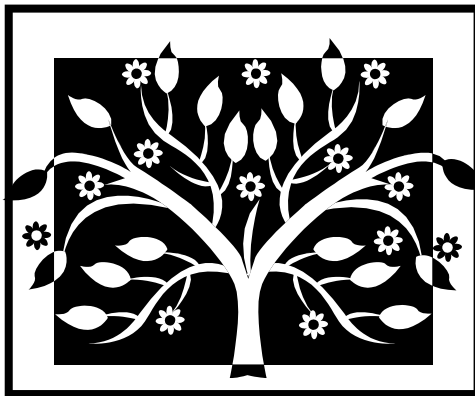


GUARDIAN'S HANDBOOK

**A Guide to the
Responsibilities of Guardians of Adults with
Mental Disabilities**



**Office of Public Guardian
Department of
Disabilities, Aging and Independent Living
Agency of Human Services
State of Vermont
June 2015**

INTRODUCTION

Thank you for your interest in becoming a guardian for an adult with mental disabilities. Being a guardian is a big job. It is also a unique and very rewarding opportunity to make an important difference in another person's life. Helping to protect a person from possible abuse or exploitation, making it possible for the person to receive needed care and treatment, and helping the person to maintain dignity and maximum independence are some of the rewards of being a guardian.

This booklet has been prepared by the Office of Public Guardian to help private guardians and people considering becoming guardians to understand the role and responsibilities of guardianship. The Office is available to provide additional information and support to private guardians as they carry out these responsibilities.

For the most current information and forms, go to our website: <http://www.dail.vermont.gov/> or call (802) 828-2143.

**Jackie Rogers, Director
Office of Public Guardian**

TABLE OF CONTENTS

What is a guardian?	1
Who may have a guardian?	1
How is a guardian appointed?	2
Who can serve as a guardian?	4
What is the Office of Public Guardian?	6
General Responsibilities of a Guardian	6
What are the powers of a guardian?	8
1. Medical	
2. Financial decisions	
3. General supervision	
4. Legal decisions	
Obligations to the Probate Court	17
What rights are retained by the individual?	18
How is a guardianship terminated?	19
What are the alternatives to guardianship?	20
Other questions about guardianship	23
List of Probate Courts	26
List of Public Guardian offices	28
New Guardianship Checklist	30

WHAT IS A GUARDIAN?

A guardian is a person appointed by the court to assume responsibility for making decisions on behalf of another person. A guardian is appointed if the court finds the individual is unable to make certain decisions independently.

Under Vermont law, guardianship services for adults must encourage self-determination and independence, and the extent of a guardian's decision making authority must be based upon the abilities and needs of the individual. Some guardians have responsibility for all personal and financial matters of the individual, and other guardians have authority only over particular aspects of the individual's life, such as medical decisions or finances.

WHO MAY HAVE A GUARDIAN?

a. **Voluntary** - Any person of at least 18 years of age, who desires assistance with the management of his or her affairs, may file a petition with the Probate Division of the Superior Court in the county where s/he lives requesting the appointment of a guardian. A guardianship established in this manner is called a *voluntary guardianship*. If the court finds that the petitioner does not understand the nature, extent, and consequences of the guardianship and in the court's opinion requires assistance with the management of his or her personal or financial affairs, the court may treat the petition as if filed as an involuntary guardianship even if the person says he or she wants a guardian.

b. **Involuntary** – Vermont law establishes very specific conditions under which an involuntary guardian may be appointed for an adult.

To order involuntary guardianship, the judge must find that

- The individual is unable to manage, without the supervision of a guardian, some or all aspects of his or her personal or financial affairs, and
- The inability results from significantly impaired or sub-average cognitive functioning

Mere eccentricity is not a criterion for the appointment of a guardian. Guardianship is not designed for people who sometimes make a bad decision or use poor judgment, but rather for persons whose difficulty in receiving information or making and carrying out decisions creates serious risks to their health, safety, or financial well being.

HOW IS A GUARDIAN APPOINTED?

An involuntary guardianship is initiated through the filing of a petition with the Probate Division of the Superior Court by an interested party (called the **petitioner**) such as a family member, social worker, or home health nurse. The petition does *not* have to be prepared or submitted by an attorney. The petition is accompanied by a List of Interested Persons, such as close relatives, the person's attorney, the agent named in the person's advance directive, and anyone who is currently managing the person's affairs. The forms for petitioning for guardianship are available at every Probate Division Court office or online at www.vermontjudiciary.org/.

The court then orders that a professional evaluation of the individual be done, and a report completed within 30 days.

The evaluator must describe the individual's abilities and disabilities in detail, and make recommendations about the

need for and extent of a guardianship. The court will give a copy of the evaluation to the petitioner, the individual, the individual's attorney and the guardian, if a guardian is appointed. The evaluation is confidential, and people who get a copy of the evaluation may not share it with anyone else unless they get court approval.

If the individual is low income, the petitioner should file a Statement of Proposed Ward's Assets and Income. If this statement shows that the person cannot afford to pay for the evaluation, the state will pay for the evaluation. If the individual can afford to pay for the evaluation, he or she will ordinarily be responsible for paying the evaluator's fee.

The court must notify the individual in writing that a petition has been submitted. The court must also see that the individual is represented by a lawyer. The lawyer must meet with the individual before the hearing and explain the case to the individual. The lawyer's duty is to represent the individual's wishes and to make sure the individual's rights are protected. The individual is required to pay the lawyer's fee if he or she can afford to do so. The court may also appoint a **guardian ad litem** to advise the lawyer when an individual lacks the ability to communicate with his or her lawyer.

A hearing is ordinarily held between 15 and 30 days from the date the evaluation is filed with the court. The individual, the petitioner, and all interested parties named in the petition receive notice of the hearing. In general, interested parties may attend the hearing and testify; the individual and the petitioner have the right to call

additional witnesses as well. At the end of the hearing, the judge decides, based upon the evaluation and any other evidence presented at the hearing, whether or not the individual meets the legal criteria for needing a guardian, and, if so, the areas where the individual needs a guardian. If the judge decides the individual needs a guardian, an order is issued listing the specific powers and duties of the guardian.

An emergency temporary guardian can be ordered in cases where protection is needed more quickly than the usual procedure allows. The court must find that **serious** and **irreparable harm** to the person or his or her finances will result if the usual procedure is followed.

An emergency temporary guardian can be given the same powers permanent guardians have, but the powers are usually limited to those which address the most urgent concerns. Following the appointment of a temporary guardian, the usual guardianship procedure must be followed to determine whether or not a permanent guardian will be appointed and what powers will be granted.

WHO CAN SERVE AS A GUARDIAN?

A guardian must be a competent person who is

- age 18 or older;
- not a paid home provider or the operator of the residential facility, such as a nursing home, where the individual resides or is receiving care; and
- not the person who served as guardian ad litem in the hearing.

In deciding whom to appoint, the court must consider:

- the person's advance directive, if any;
- the past and current preference of the individual;
- the geographic location of the proposed guardian;
- the relationship between the individual and guardian;
- the proposed guardian's ability to carry out the guardianship; and
- the willingness and ability of the proposed guardian to communicate with the individual and to respect the individual's choices and preferences;
- any potential financial conflicts of interest.

The guardian should have no financial or personal interest that will prevent the guardian from acting with undivided loyalty to the person in guardianship.

A person who lives outside of Vermont may be appointed guardian if the court finds she or he is otherwise qualified to serve.

Before being appointed guardian, the proposed guardian must consent to a criminal background check and a check to see if he or she is listed on the Vermont child and adult abuse registries. The court may also check criminal and adult registries in other states. If the background check shows that the proposed guardian has a criminal history or a history of abuse or neglect, the person is not automatically excluded from being a guardian. The judge will take into account the nature and seriousness of the offense in deciding whether the person should be a guardian.

WHAT IS THE OFFICE OF PUBLIC GUARDIAN?

The Office of Public Guardian provides guardianship services to adults with **developmental disabilities** and individuals **60 years of age and over** for whom a suitable and willing private guardian cannot be found. Every effort to locate a suitable private guardian must be made before a public guardian may be appointed. Public Guardians for people with **developmental disabilities** are appointed through **Family Court**; Public Guardians for individuals **60 years of age and over** are appointed by **Probate Court**. The Office of Public Guardian is also available to provide information to the public about guardianship and its alternatives, and to assist private guardians in understanding and carrying out their duties. A list of Public Guardian field offices is located on page 28-29.

GENERAL RESPONSIBILITIES OF A GUARDIAN

A guardian should –

- Call and visit the individual often
- Return calls from the individual and caregivers
- Listen to the individual's thoughts and desires
- Help make decisions
- Treat the individual as an adult
- Respect the individual's privacy
- Talk with not "at" the individual
- Include the individual in conversations.

A guardian should NOT –

- Have a conflict of interest
- Make decisions without consulting the individual

- Make decisions where the court has not given authority
- Treat the individual as a child.

A good guardian helps the individual

- Receive mail, use the phone, and see family as desired
- Be listened to and respected
- Have choices
- Vote
- Have privacy and also have contact with friends
- Get needed services and benefits
- Be more independent
- Find people who believe in the individual's gifts and talents
- Learn to make choices and decisions independently
- Know how to appeal if dissatisfied with the guardian

The guardian should model the behavior that s/he expects service providers to follow in relating to the individual. The way the guardian interacts with the individual and speaks to or about the individual, can serve as an example for others.

A guardian needs to be available in case of emergency. If a guardian is going to be away, the guardian should make arrangements to be contacted if needed.

A guardian should keep all documents and paperwork regarding the guardianship in a convenient place, such as a file drawer, where it can be located quickly. A checklist of basic documents is at the end of this booklet.

WHAT ARE THE POWERS OF A GUARDIAN?

There are several distinct guardianship powers. The court determines at or after the guardianship hearing which of the powers are given to the guardian and which are retained by the individual, and these are put in the court order. The guardian or the individual may ask the court at a later point to modify the order to include additional powers or fewer powers if circumstances change.

In making decisions on behalf of the individual, the guardian's role is to support the wishes, values, beliefs, and preferences of the individual and to decide, as much as possible, as the individual would decide if able. The individual should be consulted and included in all decisions. The personal preferences of the individual must be followed, unless the preferences would result in harm, or the individual does not understand the consequences.

1. Medical Decisions

A medical guardian is responsible for giving or withholding consent to all medical and dental treatment. A guardian is not expected to be a medical expert, but should ask questions until s/he understands the individual's condition, the treatment options, and the risks and benefits of treatment. A guardian has the authority to get a second opinion and to change doctors or hospitals if not satisfied with the care being given. A guardian should become familiar with the medicines that are being

prescribed, and should ask the doctor to explain their risks, benefits, and side effects, and what will happen if the individual doesn't take the medicine. If a guardian thinks the individual is capable of making certain decisions (such as going to the dentist or getting an eye exam) the guardian may and should allow the individual to make the decision and sign the necessary paperwork.

Above all, a guardian acts as a medical advocate. The guardian is there to be sure that the individual is getting the best care that is appropriate to his or her condition. If the individual is hospitalized, the guardian should be present at the hospital on a regular basis. The guardian will often be the one to give information about the individual to nurses and doctors. As shifts change and different doctors and nurses become involved, it may be necessary to repeat the information several times.

Wherever the individual lives, the guardian is responsible for making sure s/he receives regular medical and dental care.

If the individual executed a medical Advance Directive before becoming mentally disabled, the guardian must follow the Advance Directive unless the court has told the guardian not to.

If the person under guardianship objects to a medical decision by the guardian or refuses treatment, the guardian must bring the situation to the attention of the court and get written approval by the court to proceed.

A guardian may be asked to make a decision to limit treatment, such as a “do not resuscitate” (DNR) order. These are difficult choices. A guardian should not let medical personnel pressure him/her for a decision, and should take time to consult with other family members and people who know the individual. The guardian’s role is to decide what the individual would want if s/he could tell us, and to follow the advance directive if there is one.

Decisions to withhold or withdraw life-preserving treatment (other than antibiotics) or consent to a DNR order must be approved by the court before being implemented except emergencies.

If a decision to withhold or withdraw life sustaining treatment needs to be made, and there is not enough time to get court approval, the guardian must immediately notify the court by telephone of the need for a decision and what decision has been made. A guardian may give an emergency consent to a DNR order only after obtaining a letter or report from the doctor saying that the person’s heart is likely to stop before court approval can be obtained. The doctor’s letter or report must be given promptly to the court.

Guardians for individuals with developmental disabilities are not authorized to consent to surgical sterilization (such as vasectomy, hysterectomy) even with an approval from the Probate Court; permission must be granted by the Family Court for the county where the individual lives.

No guardian can consent to involuntary psychiatric treatment or involuntary psychiatric hospitalization of an individual. However, an individual under guardianship may be permitted to sign into a psychiatric hospital as a voluntary patient if the hospital thinks the individual understands his/her rights and choices.

2. Financial Decisions

Generally, a guardian's financial powers enable the guardian to supervise the individual's money and property. Thus, matters concerning spending, conserving or investing money or property become the responsibility of a financial guardian. The extent of the guardian's powers over finances will be granted by the court order, but in all respects the guardian assumes a **fiduciary** relationship to the individual: all decisions about the individual's finances must be made for the benefit of the individual and no one else. If the guardian has a conflict of interest, the guardian is responsible for telling the court about it.

a. Power over contracts. Contracts can cover a variety of subjects ranging from cell phone contracts and credit cards to car loans and leases. The guardian has the power to approve or invalidate any contract the individual has made (since the guardianship began) or wants to make. The guardian should be sure that rental and loan agreements are fair, and that any deposits are returned when the person moves.

b. Power over sale or encumbrance of real property.

This power authorizes approval of the sale or encumbrance of real property, such as mortgaging or leasing real estate. For transactions involving **real estate** (land or buildings) the guardian must get explicit **approval of the Probate Court** by demonstrating that the individual will both benefit and be able to maintain his or her financial obligation in conjunction with the arrangement. The court may authorize the sale of real estate under any of the following conditions:

- 1) the personal estate of the individual is insufficient to pay the expenses of maintaining the individual or his/her family;
- 2) the personal estate of the individual is insufficient to pay the debts of the individual;
- 3) it is in the interest of the individual to sell the real estate to make a better investment.

If a family member or other person is going to live in the individual's house or use their property (such as a car) without paying for it, the arrangement should be reviewed by the court.

c. Power of general supervision over income and resources. This power addresses the day-to-day management of the individual's finances and grants and the guardian authority over the income and spending of the individual. **The guardian should establish a bank account specifically for the individual, and should not mix these funds with his or her own money or any other funds. The individual's funds and financial obligations are completely separate from those of the guardian.**

The account should be in the names of both the individual and the guardian, with the guardian identified as such, and with the individual's Social Security number on the account. This is to prevent the funds in the account being reported to the IRS as the guardian's income.

Income includes wages and other earned income as well as insurance benefits, public benefits, tax refunds and pensions. The guardian should ensure that the individual receives benefits to which s/he is entitled under public programs. If the individual has a considerable estate, the guardian should explore investment options, and should consult with a certified financial counselor and seek the approval of the court for major financial decisions. A guardian should not gift away any assets of the individual without securing prior court approval for the gift.

If the individual owns a house or car, the guardian should be sure they are secure and in good repair and the insurance is up to date.

Federal law prohibits individuals that lack the mental capacity to contract or manage their own affairs from receiving, purchasing and possessing firearms or ammunition.

The guardian should make sure that the individual is not cheated or overcharged. The guardian should assure that others don't take the individual's belongings without fair compensation.

The guardian is responsible for paying the individual's bills (using the individual's assets). **However, the**

individual should have the opportunity to manage personal funds to the extent s/he is able. The guardian should make payments by check or by an electronic bill payment system that keeps a record of payments. The guardian must keep track of every expenditure and submit an annual financial accounting to the court. A computer accounting system, such as Quicken, may be helpful. The guardian may liquidate resources as necessary to ensure that there is enough money to meet the individual's needs. This should be done only after considerable exploration of the alternatives to and consequences of liquidation, and after obtaining probate court approval. **The guardian is not required personally to support the individual financially or contribute to funeral expenses.**

The guardian is responsible for seeing that the individual's property taxes and federal and state income tax returns are filed and paid. The guardian uses the individual's funds to pay an accountant or qualified tax preparer to give tax advice and to prepare the returns. The guardian signs the returns and may need to attach a copy of the guardianship order to the return.

3. General Supervision

The power of general supervision is ordered when the court finds that an individual is unable to meet his or her needs for housing, nutrition, clothing, hygiene, or safety. The guardian may be given the authority to make decisions about the individual's residence, care, therapy, skills training, supervision, education, and employment. As with all other matters, this power must be exercised in a manner that assists the individual to live the life s/he wishes to be leading.

General supervision usually includes the authority to choose or change a residence. The guardian should assess the needs and wishes of the individual regarding the type and location of his or her residence, and should make every attempt to see that the individual has a chance to visit proposed homes. The guardian also should visit the proposed homes and consider how the homes will meet the individual's needs. Will the person have support to pursue activities of interest and maintain social contacts? Will the home be attentive to the individual's health needs?

Special consideration must be given to any proposed change of residence from a private home to a residential facility such as a nursing home, group home, assisted living or residential care home. Other options should be explored. **Unless it is a dire emergency, the guardian must notify interested parties and obtain court approval before moving the individual from a private home to a group setting, such as a residential care home, assisted living facility, or nursing home. After an emergency move, the guardian must notify interested parties of the move and ask the court for approval.** Court approval is not required to move an individual from one private home to another, but the guardian should notify the court of the new address.

A guardian with the powers of general supervision should ensure that the individual is in a safe home living with safe people who treat the individual with respect. The guardian should assure that the individual has appropriate clothing, good food, privacy, and needed equipment and accommodations (such as glasses and hearing aids, lifts,

adaptive technology). The guardian should make sure that the individual has access to a phone, can receive mail, and see family as desired and make sure that special occasions, such as birthdays and anniversaries and religious holidays, are remembered and observed.

The guardian should also participate in treatment planning meetings. Any program or facility serving the individual is expected to inform the guardian promptly of any changes in the individual's condition and obtain the guardian's permission before starting or changing a treatment. If a program or facility is not willing to keep the guardian informed, the guardian should seek a different program.

When an individual in guardianship is employed, the guardian should assure that the individual is compensated fairly and that the working conditions are safe.

4. Legal Decisions

This power authorizes a guardian to sue on behalf of the individual or defend the individual in lawsuits, and to settle legal disputes involving the individual. The guardian should consult with an attorney in any situation involving litigation and, as with all powers, carefully consider what is most fair and beneficial to the individual. If the individual is charged with a crime, the court will appoint a public defender if the individual cannot afford an attorney. In other situations the guardian may need to retain an attorney to protect or defend the individual's rights and interests. Vermont Legal Aid may be able to provide free representation to individuals with disabilities and people

over 60 years of age. The individual has the right to retain an attorney without the guardian's consent and to communicate freely with the attorney or other advocates of his or her choosing.

OBLIGATIONS TO THE PROBATE COURT

State law requires guardians to file several different reports:

- 1. Inventory:** Within 30 days of the appointment, a guardian with financial responsibilities must file an inventory of all real and personal property of the individual. The inventory is filed with the court and sent to all parties who have filed a Notice of Appearance in the proceedings. (A list of these names can be provided by the court.) For items to include, see the New Guardian Checklist at the end of this booklet. If additional assets are found after the inventory, file a supplementary inventory.
- 2. Financial report:** One year after the appointment, and annually thereafter, guardians with financial powers must file an accounting of the income received and expenditures made from the individual's funds and assets.
- 3. Personal status report:** One year after the appointment, and annually thereafter, guardians with general supervision, medical, and legal powers, must file a report which summarizes the progress and condition of the individual, including description of his or her health, medical care, residence, education, employment, and

other programs. The report must also explain to the court how the guardian carried out the duties and powers contained in the order, and must include the guardian's opinion as to the individual's continuing need for a guardian.

4. Final Accounting: Upon termination of the guardianship, a final accounting of the assets of the estate must be filed.

Forms for all of the reports are available from the Probate Court or online at www.vermontjudiciary.org

Bonding

The court has the authority to require that a guardian who has control over finances obtain a bond. A bond is a type of insurance that protects the individual's estate against loss in case of mishandling of the estate. The cost of the bond is usually taken from the individual's funds.

WHAT RIGHTS ARE RETAINED BY THE INDIVIDUAL?

The guardian has only the authority specifically granted by the court order, and all other rights are retained by the individual. The individual retains his or her civil rights, which include, among other things, the right to retain a lawyer, the right to vote, rights of freedom of religion and association, rights of expression and free speech, rights to due process, and the right to petition the court on matters concerning the guardianship.

Some of the rights of the individual relate specifically to the guardianship court proceedings. The individual has the right to retain an attorney, and the individual and attorney must receive notice of any actions of the court involving the guardianship. The individual has the right to petition the court at any time for termination or modification of the guardianship or to seek a change of guardian. The individual also has the right to appeal any decision of the court with respect to the guardianship. The guardian has an obligation to explain the nature and consequences of the legal proceedings to the individual and to seek legal counsel or a guardian ad litem if assistance is warranted.

HOW IS A GUARDIANSHIP TERMINATED?

Each year, the court notifies the individual of his or her right to ask the court to modify or terminate the guardianship. Anyone interested in the welfare of the individual may ask the court to modify or terminate the guardianship at any time.

There are five reasons to modify or terminate a guardianship:

1. death of the guardian;
2. failure of the guardian to file an annual report;
3. failure of the guardian to follow a court order;
4. change in the ability of the individual to manage his or her affairs; and
5. change in capacity or suitability of the guardian to carry out his or her powers and duties.

The court may terminate the guardianship if it finds guardianship is no longer necessary because of a change in the ability of the individual to manage his or her affairs. The other situations may result in the appointment of a different guardian. If a person no longer wants to be guardian, s/he must formally request permission from the court to resign and file a final accounting; if another appropriate guardian can be found, this request is usually granted.

WHAT ARE THE ALTERNATIVES TO GUARDIANSHIP?

Often guardianship is not necessary to meet the needs of an individual who is having difficulty handling his or her personal and financial affairs. There are alternatives that provide supports for the person or for substitute decision making authority in specific areas, and these should be used instead of guardianship whenever possible. Just like guardianship, each of the alternatives has advantages and disadvantages.

Direct deposit, electronic payment and joint accounts: Banks offer a variety of services which can provide tools to help manage a person's funds. Sometimes the problems with keeping track of a person's funds can be solved through direct deposit of income payments. Bank accounts can be set up for electronic payment of regular bills, such as telephone, cable, insurance, car payments, rent or mortgage. Withdrawal limits can limit exploitation and unwise spending. Joint signature accounts can provide for the requirement of two signatures, or simply for a second signer when the individual is ill and unable to sign checks.

Advance Directive: An advance directive is a document by which a person who is not presently incapacitated gives instructions for medical decisions in the future. With an advance directive a person can appoint an “agent” to make medical decisions in the future if s/he becomes incapacitated; a person can also select a guardian should s/he need one in the future (this can be the same person as the agent). An advance directive can include information about the type of treatment the person wants. Medical guardianship is usually unnecessary if a person has a properly executed and comprehensive advance directive. (**Advance directive** is the term now used in Vermont for documents that used to be called **Living Will** or **Durable Power of Attorney for Health Care**.) The Vermont Advance Directive Registry is a free electronic database that stores advance directive documents. More information and sample forms are available from Vermont Ethics Network, (828-2909) www.vtethicsnetwork.org or the Vermont Advance Directive Registry, <http://healthvermont.info/vadr/register.aspx> These websites include a simplified form that is suitable for use by people with limited reading and language skills.

Power of Attorney: A power of attorney is a written, witnessed document that authorizes one person to act for another, usually in financial matters. Often people execute a power of attorney when they are planning to be away from home or hospitalized to ensure that their financial affairs are monitored. A power of attorney can be written in such a way that it remains in effect even if the person becomes incapacitated. This is called a **durable power of attorney**. A power of attorney can also be written in such a

way that it does not become effective until/unless the person becomes incapacitated. This is called a **springing power of attorney**. A financial power of attorney should be drafted by a lawyer.

Representative Payee: A person who receives Social Security, SSI, Railroad Retirement, Black Lung, or VA benefits may have a “payee” to receive the benefits and pay bills. The payee usually opens an account as payee and the benefits are sent monthly by electronic deposit. The payee may use the benefits only for the benefit of the disabled person, such as to pay rent or buy food and clothing. The payee is accountable to the Social Security Administration or other government agency and has to file periodic reports and notify the agency of any changes in the person’s status (such as address, resources) or income. If an individual receives no income except government benefits and has a reliable representative payee, there is no need for a financial guardian.

Trust: A trust is a legal plan for placing funds in the control of a trustee for the benefit of the individual. Although the trustee controls the funds, the trust document dictates how the money is to be handled and for whose benefit it should be spent. For example, one spouse can place his or her assets in trust for the benefit of the other spouse. Trusts may affect a person’s eligibility for various public benefit programs, and an attorney should be consulted **before** executing a trust. Trusts are usually used when someone wants to give or bequeath a significant amount of funds or property to a person who will need assistance in managing the funds or property. If all of a

person's funds are in a trust and the trustee is reliably paying the person's bills, there may be no need for a financial guardian.

Case management: An active case manager through a social services agency or an independent support broker can often provide the supports, advocacy and assistance that a person needs.

Circle of support: An informal network of friends and family can often be sufficient to provide the supports and assistance that a person with mental disabilities needs.

Mediation: Mediation is a process in which an impartial third party facilitates resolution of a dispute by promoting voluntary agreement by the parties to the dispute. Mediators specially trained in guardianship and elder care issues are available from Champlain College, (telephone: 866-282-7259) Division of Education & Human Studies <http://www.champlain.edu/graduate-studies/programs/master-of-science-in-mediation-and-applied-conflict-studies/mediation-certificates.html>

OTHER QUESTIONS ABOUT GUARDIANSHIP

Can a guardian charge a fee for services?

Private guardians may charge reasonable fees and expenses. They must be approved by the court. Public guardians do not charge fees.

What is a guardian ad litem?

A guardian ad litem (GAL) is not the same as a guardian. A guardian ad litem is a person appointed by the court to protect the rights of a person in a specific legal case, when that person is unable to communicate with the court or with his or her attorney. The GAL has the responsibility to make recommendations to the individual's attorney and to the court that are in the individual's best interest. The GAL's role ends when the guardianship case is over.

Who pays for a court-appointed lawyer?

The Probate Courts have no funds to pay for lawyers they appoint. The individual's lawyer will be paid from the individual's own money. If the individual cannot afford to pay, the court will appoint a volunteer (*pro bono*) attorney or ask Vermont Legal Aid to handle the case.

What if the guardian makes bad financial decisions which diminish the individual's estate?

If the guardian assesses each decision and its consequences carefully, acts promptly, seeks guidance from the court when in doubt, and avoids conflicts of interest, the guardian is not held liable for financial setbacks. If, however, the court finds that the guardian's actions were careless or neglectful or self-serving and amount to a breach of fiduciary duty, there may be an obligation to pay back the amount of the funds lost. The guardian may be asked in advance to post a security bond to insure and protect the individual's estate in such situations. If a guardian is responsible for financial

exploitation of an individual, s/he may be guilty of adult abuse. **Guardians must keep their own money separate from that of the individual.**

What if the individual is a victim of abuse, neglect or exploitation or other crime?

Visiting frequently and showing concern and respect for the individual play an important role in preventing abuse. Nevertheless, a guardian must remain alert to indicators of physical or sexual abuse, emotional abuse, caregiver neglect, improper care, and financial exploitation.

If the guardian believes that the individual has been the victim of a crime, the guardian should call the police to report the crime. If the guardian has reasonable cause to believe that the individual has been abused, neglected, or exploited, s/he should, as soon as possible, report to: Adult Protective Services (1-800-564-1612). The guardian should consult with the worker from Adult Protective Services for advice about how to protect the individual while the investigation is in progress.

Does the guardian have any authority after the individual dies?

Yes. After the individual dies, the guardian's authority can extend up to two years in order to:

- arrange and pay for the funeral
- request an autopsy or medical records
- tie up any financial loose ends

Once the probate court appoints an executor or administrator, the guardian's authority ends.

THE PROBATE COURTS

Addison Probate Division

7 Mahady Court
Middlebury, VT 05753

802-388-7741

Bennington Probate Division

207 South Street,
Bennington, VT 05201-0065

802-447-2705

Caledonia Probate Division

1126 Main Street, Suite 1
St. Johnsbury, VT 05819-0406

802-748-6605

Chittenden Probate Division

175 Main Street
PO Box 511
Burlington, VT 05402-0511

802-651-1518

Essex Probate Division

PO Box 426
Island Pond, VT 05846-0426

802-723-4770

Franklin Probate Division

17 Church Street
St. Albans, VT 05478

802-524-7948

Grand Isle Probate Division

PO Box 7
North Hero, VT 05474-0007

802-372-8350

Lamoille Probate Division

PO Box 570

Hyde Park, VT 05655

802-888-3306

Orange Probate Division

5 Court Street

Chelsea, VT 05038

802-685-4610

Orleans Probate Division

247 Main Street

Newport, VT 05855

802-334-3305

Rutland Probate Division

83 Center Street

Rutland, VT 05701

802-775-0114

Washington Probate Division

10 Elm Street, Unit 2

Montpelier, VT 05602

802-828-3405

Windham Probate Division30 Putney Road, 2nd Floor

Brattleboro, VT 05301

802-257-2898

Windsor Probate Division

12 The Green

Woodstock, VT 05091

802-457-1503

Office of Public Guardian Field Offices

<u>Brandon</u>	P.O. Box 365, Brandon, VT 05733 Public Guardian	247-4390
<u>Brattleboro</u>	P.O. Box 2386, W. Brattleboro, VT 05303 Public Guardian	251-2145
<u>Burlington</u>	110 Cherry Street, Suite 2-1, Burlington, VT 05401 OPG Regional Supervisor	865-7721
<u>Hyde Park</u>	PO Box 226, Hyde Park, VT 05655 Public Guardian	888-2525
	PO Box 128, Hyde Park, VT 05655 Public Guardian	888-3370
<u>Lincoln</u>	P.O. Box 396, Bristol, VT 05443 Public Guardian	453-7694
<u>Middlebury</u>	156 South Village Green Suite 103, Middlebury, VT 05753-6900 Public Guardian OPG Regional Supervisor	 388-4692 388-4693
<u>Montpelier</u>	81 River Street, Suite 208 Montpelier, VT 05602 Director OPG Regional Supervisor Public Guardian Public Guardian Program Technician	 828-3623 828-3622 828-3620 828-3669 828-2143

<u>N. Ferrisburg</u>	PO Box 122, North Ferrisburg, VT 05473 Public Guardian	877-6779
<u>Richmond</u>	P.O. Box 1138, Richmond, VT 05477 Public Guardian	324-3528
<u>Rutland</u>	1 Scale Avenue, Suite 109, Rutland, VT 05701 OPG Regional Supervisor OPG Regional Supervisor Community Financial Specialist Public Guardian Public Guardian	 786-5041 786-5043 786-5045 786-5049 786-5042
<u>Shoreham</u>	Shoreham, VT 05770 Public Guardian	897-5476
<u>Springfield</u>	71 Main Street Springfield, VT 05156 Public Guardian Public Guardian Public Guardian	 885-8839 885-8872 885-8871
<u>St. Albans</u>	27 Federal St., Suite 202, St. Albans, VT 05478 Public Guardian Public Guardian	 524-7992 524-7991
<u>Townshend</u>	PO Box 87, Townshend, VT 05353 OPG Intake & Diversion Specialist	365-4478
<u>West Burke</u>	PO Box 354, West Burke, VT 05871 Public Guardian	467-1182

New Guardian Checklist

Information and Documents to Collect

General

- *Date of Birth (put birthday on your calendar)*
- *Social Security number*
- *Medicaid number (if different)*
- *Medicare # and date it began*
- *Current photo*
- *Power of attorney, if any*
- *Name, address, and phone of next of kin*
- *Name, address, and phone of caregivers*
- *Funeral and burial arrangements, if any*
- *Last will and testament location*
- *Current benefits (Social Security, VA, SSI, etc.) and claim #*
- *Name and address of employer*
- *Court-ordered guardianship evaluation*
- *Pets, including names, vet, care needs*

Medical

- *Health insurance card and premium information*
- *Advance Directives or Living Will*
- *List of allergies and chemical sensitivities*
- *Name and phone number of all health care providers and therapists*
- *Current medications: name, purpose, and dosage*
- *Medical history*
- *List of current medical problems and treatments*
- *Current code status (DNR or not)*

Financial

- *Bank accounts and checks*
- *Uncashed checks and cash*
- *Wages*
- *Safety deposit boxes*
- *Stocks, bonds, CDs, money market accounts*

- *Credit cards, including account number*
- *Trusts*
- *Life insurance policies*
- *Retirement accounts*
- *Pensions, benefits, and food stamps*
- *Vehicles, including title and insurance*
- *Promissory notes or money owed to the individual*
- *Real estate and property tax status*
- *Keys to vehicles, house, apartment, safety deposit box*
- *Inventory of personal property, including jewelry, antiques, fine art, animals, collections (such as stamps), firearms, furniture, clothing*
- *Vehicle and property insurance*
- *Name and address of representative payee, if any*
- *Previous year tax return*
- *List of debts, including back taxes, rent, mortgage, credit cards*
- *Regular bills, including phone, cable, internet, heat, power, water, property tax*

Legal

- *Pending legal actions, name of attorney, date response needed*
- *Any claims that require filing of lawsuit and date of incident (such as car accident)*

Checklist of Initial Guardianship Actions

- *Meet with individual and explain your new role. Leave phone #*
- *Notify all health care and social service agencies of your role*
- *Ask for team meeting to review services and needs*
- *Notify caregivers and physician of your emergency contact info*

(The following are for financial guardians.)

- *Establish rep payee for government benefits, or contact payee*
- *Secure valuable property safe from loss, theft, destruction*
- *Arrange for care of property and pets*
- *Notify banks, broker, credit card companies, collection agencies, insurance agency of guardianship*

- *Notify Social Security and other benefits programs of guardianship*
- *Cancel unneeded credit cards and charge accounts*
- *Be sure insurance is up to date (health, property, vehicle)*
- *Change locks on house or apartment, if vacant*
- *Establish system for depositing income and paying bills*

FOR MORE INFORMATION CONTACT:

THE OFFICE OF PUBLIC GUARDIAN

81 River Street, Suite 208
Montpelier, VT 05609-2210
(802) 828-2143

Jackie Rogers, Director, Office of Public Guardian
www.dail.vermont.gov

**THIS MATERIAL IS AVAILABLE, UPON
REQUEST, IN ALTERNATE FORMAT SUCH AS
BRAILLE, LARGER PRINT, OR DISK.**

Updated 06/2015